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No. 85-64

In The

Supreme Court of the United States

October Term, 1985

WORLD OF SLEEP, INC.,
Cross Petitioner,

v.

LA-Z-BOY CHAIR COMPANY;
MONTGOMERY WARD & CO., INC.;
ARTHUR MAULDIN, individually and
d/b/a LA-Z-BOY SHOWCASE SHOPPE,
Cross Respondents.

BRIEF OF MAULDIN CORPORATION AND ARTHUR MAULDIN IN OPPOSITION TO CROSS PETITION OF WORLD OF SLEEP FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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QUESTION PRESENTED

Is there any basis for granting review of a summary judgment entered on behalf of the Mauldin Corporation and Arthur Mauldin where both the district court and the court of appeals found as a matter of fact and law that there was insufficient evidence admissible against Mauldin of its participation in the alleged antitrust conspiracy?

DESIGNATION OF PARTIES

The petitioner and respondent/cross petitioner are identified in the caption appearing on the cover of the cross petition. Cross respondents are the Mauldin Corporation and Arthur Mauldin d/b/a La-Z-Boy Showcase Shoppe. Although Jeff D. Mauldin is listed on the caption of the opinion by the court of appeals, he was never served and accordingly never became a party to this case.

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OPINIONS BELOW

The opinion of the court of appeals is reported at 756 F.2d 1467 and is printed in the Appendix to the cross petition. The opinion of the district court granting summary judgment in favor of cross respondents is not reported but is printed in the Appendix to this opposition brief.

STATEMENT OF THE CASE

Cross petitioner World of Sleep, Inc. requests this Court to issue a writ of certiorari to review a decision by the court of appeals which affirmed the entry of summary judgment by the district court on behalf of cross respondents Arthur Mauldin and the Mauldin Corporation ("Mauldin defendants"). The district court rejected World of Sleep's claims that the Mauldin defendants were participants in a conspiracy to violate Section 1 of the Sherman Act, 15 U.S.C. § 1, because it concluded, on two separate occasions, that there was insufficient admissible evidence of such alleged participation. Accordingly, the district court granted summary judgment and the court of appeals affirmed that judgment. The pertinent procedural history of this case is as follows.

On December 10, 1979, World of Sleep filed its complaint against La-Z-Boy Chair Company ("La-Z-Boy"), Montgomery Ward & Co., Incorporated ("Wards"), Arthur Mauldin, and the Mauldin Corporation, the Mauldins collectively doing business as "La-Z-Boy Showcase Shoppe," charging the defendants with violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. In a separate claim for relief, World of Sleep charged La-Z-Boy, alone, with price discrimination in violation of the Robinson-Patman Act, 15 U.S.C. § 13.

After nearly two years of discovery, including numerous depositions and production of volumes of documents, the Mauldin defendants, on November 7, 1981, filed a motion for summary judgment. The Mauldin defendants contended that the undisputed facts of record failed to demonstrate that the Mauldin defendants par-

ticipated in a conspiracy as alleged by World of Sleep. In support of the motion for summary judgment, the Mauldin defendants, pursuant to Rule 56, F. R. Civ. P., submitted excerpts from the deposition testimony of witnesses Mauldin, Rall and Schroeder, who testified that there was no agreement or conspiracy involving the Mauldin defendants, and whose factual testimony refuted the conspiracy theory hypothesized by World of Sleep.

In response to the Mauldin defendants' summary judgment motion, World of Sleep offered no admissible evidence by way of deposition testimony, affidavit or documents to refute any of the testimony of defendant Mauldin, or witnesses Rall and Schroeder.

At oral argument on Mauldin's motion, held on December 29, 1981, World of Sleep's counsel made unsupported assertions that the Mauldin defendants' newspaper advertisements and sales tickets would show that the Mauldin defendants "kept their prices up," but offered no admissible evidence in support of this argument. The district court found that this offer of evidence was not in the form required by Rule 56, F. R. Civ. P. Nevertheless, the district court assumed for purposes of summary judgment that the evidence would show what counsel represented it would show. The court concluded, nonetheless, that World of Sleep had not supported its claims and found, instead, that the Mauldin defendants were entitled to summary judgment.

In opposition to the Mauldin defendants' motion for summary judgment, World of Sleep also sought to introduce transcripts of surreptitious tape recordings made by its principal, Thomas Hansen, of telephone conversa-

tions between Hansen and Rall, an employee of co-defendant La-Z-Boy Chair Company. Copies of the transcripts were the only documents attached to World of Sleep's opposition brief submitted to the district court. The district court ruled that the transcripts were not admissible as against the Mauldin defendants because the taped conversations, being out-of-court statements, are hearsay as to the Mauldin defendants, and the comments attributed to Mauldin on the tapes were "hearsay upon hearsay." See Appendix hereto ("App."), p. 2. The court also found that World of Sleep failed to make a showing by independent evidence of the existence of a conspiracy, or that the statements attributed to Mauldin were made in furtherance of the conspiracy. Accordingly, the district court, relying on *United States v. Andrews*, 585 F.2d 961 (10th Cir. 1978), and *United States v. Peterson*, 611 F.2d 1313 (10th Cir. 1979), *cert. denied*, 447 U.S. 945 (1980), held that the taped conversations were not admissible under Rule 801(d)(2)(E) of the Federal Rules of Evidence as statements of a co-conspirator. The court therefore concluded there was no substantial, independent, admissible evidence that the Mauldin defendants were involved in a conspiracy with La-Z-Boy and Wards, and granted summary judgment.

The district court ruled that summary judgment was "especially appropriate" in this case:

> "It became painfully obvious at the December 29 hearing that this discovery has been almost entirely fruitless as to these [Mauldin] defendants. Trial is set for twenty court days. To force upon these defendants the expense, emotional strain, and time loss incident to defending themselves in such a trial, on the thin thread of plaintiff's asserted evidence against them, would be unconscionable." (App., p. 4.)

Despite the strongly worded findings of the district court, World of Sleep, on January 6, 1982, filed a motion for reconsideration of the summary judgment order. At an *in limine* hearing held on January 11, 1982, involving this and other issues, World of Sleep purported to offer further evidence of the Mauldin defendants' participation in the conspiracy. After hearing World of Sleep's evidence, the district court orally confirmed its earlier order and denied the motion for reconsideration.

The court of appeals affirmed the district court's decision in an opinion issued on March 4, 1985. In reviewing the district court's decision, the court of appeals viewed the evidence in the light most favorable to World of Sleep, recognized that summary procedures should be used sparingly in complex antitrust issues, and yet held that the district court's grant of summary judgment was proper. (Appendix to cross petition, pp. 11a-13a.) Specifically, the court of appeals concurred with the district court that the supposed independent, non-hearsay evidence of the Mauldin defendants' conduct "did not constitute sufficient independent evidence to establish Mauldin's participation in a price-fixing conspiracy, and that the hearsay statements [offered by World of Sleep] therefore were not admissible against him." (Appendix to cross petition, p. 13a.)

———o———

REASONS FOR DENYING THE WRIT

Cross petitioner World of Sleep has presented four distinct questions and asserts four distinct reasons in support of its request for a writ of certiorari to review the decision of the court of appeals. The only question

and reason which pertain to the Mauldin defendants is the issue of whether summary judgment was properly granted and affirmed. (Question No. 3 and Reason III in World of Sleep's cross petition.) Accordingly, this brief addresses only that issue. The Mauldin defendants contend that even if the Court were to grant a writ of certiorari as to the other issues and other parties, it should specifically deny the request for a writ insofar as it pertains to the Mauldin defendants, for the following reasons.

I

THE DECISION OF THE COURT OF APPEALS AFFIRMING THE GRANT OF SUMMARY JUDGMENT IS NOT IN CONFLICT WITH THE DECISIONS OF ANY OTHER COURT OF APPEALS AND CORRECTLY FOLLOWS THE TEACHINGS OF THIS COURT.

Both the court of appeals and the district court below applied the Federal Rules of Evidence and the standards for granting summary judgment consistent with the rulings of other courts of appeals and the holdings of this Court.

A. The District Court Properly Granted, and the Court of Appeals Properly Affirmed, a Summary Judgment Entered in Accordance With Rule 56, F. R. Civ. P.

The district court below was presented with undisputed admissible evidence in the form of deposition testimony which plainly and thoroughly refuted World of Sleep's claims of the Mauldin defendants' participation in an antitrust conspiracy. Rule 56(e), F. R. Civ. P., expressly provides that when a motion for summary judgment is made and supported by deposition testimony, the party opposing the motion "may not rest upon the mere allegations" of its complaint. Its response, by affidavit

or otherwise, must set forth "specific facts showing there is a genuine issue for trial." World of Sleep produced no admissible evidence to refute the Mauldin defendants' showing and therefore under Rule 56(e), F. R. Civ. P., failed, as the court below found, to meet its burden of demonstrating significant probative evidence to support its complaint. *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 289-290 (1968). As the district court stated in its Order:

> "Defendants Mauldin and Mauldin Corporation have already been dragged through many months of expensive, time consuming discovery. It became painfully obvious at the December 29 hearing [on the summary judgment motion] that this discovery has been almost entirely fruitless as to these defendants. Trial is set for twenty court days. To force upon these defendants the expense, emotional strain, and time loss incident to defending themselves in such a trial, on the thin thread of [World of Sleep's] asserted evidence against them, would be unconscionable." (App., p. 4.)

Extensive discovery had been taken in this case and the requirements of Rule 56 were met by the moving party, but not by the opposing party. Because the Mauldin defendants' motion was supported by the evidence and not contradicted, summary judgment was appropriate.

B. The District Court Properly Rejected Hearsay Evidence and Excluded Such Evidence From Its Consideration on Summary Judgment, and the Court of Appeals Properly Affirmed That Decision.

In ruling on the motion, the district court also considered, but rejected as inadmissible against the Mauldin defendants, the surreptitious tape-recorded conversations

offered by World of Sleep. These tape recordings were the only evidence World of Sleep attempted to get on the record in opposition to the summary judgment motion. The conversations were between Rall, a La-Z-Boy employee at the time of the conversations, and Hansen, the president of World of Sleep. The trial court correctly ruled that these conversations were hearsay on hearsay, inadmissible against Mauldin. As the court stated, "[n]either Mauldin nor anyone purporting to speak for him was a party to the taped conversation." (App., p. 2.)

World of Sleep attempted to skirt the fact of inadmissibility by claiming that independent evidence of Mauldin's participation in the alleged conspiracy warranted a finding of admissibility under the co-conspirator exception to the hearsay rules, Fed. R. Evid. 801(d) (2) (E). Rule 801(d) (2) (E) deems statements, otherwise hearsay, to be admissible against a party if made by a co-conspirator during the course or in furtherance of the conspiracy. Rule 801(d) (2) (E) as applied by the Tenth Circuit in *United States v. Andrews,* 585 F.2d 961 (10th Cir. 1978), however, requires that "testimony, otherwise hearsay, offered against a co-conspirator cannot be admitted unless the existence of the conspiracy is established by independent evidence." *Id.* at 965-966. *See also United States v. Peterson,* 611 F.2d 1313, 1330 (10th Cir.), *cert. denied,* 447 U.S. 945 (1980). The independent evidence must show that it is more likely than not that a conspiracy existed, that the declarant was a member of the conspiracy and that the statements made were in furtherance of the conspiracy. *Andrews,* 585 F.2d at 965. The trial court found that World of Sleep had "submitted no substantial, independent, admissible evidence that Mauldin was involved in

a conspiracy with La-Z-Boy and Wards." (App. p. 3.) The court found that the supposed "independent evidence," Mauldin's sales tickets and advertising, fell "far short of establishing that Mauldin was more likely than not involved in a conspiracy," the showing required by *Andrews, supra.* (App., p. 3.) The trial court therefore correctly concluded that World of Sleep had "shown no admissible evidence, nor even claimed to have adequate admissible evidence, to permit a finding that Mauldin was involved in a conspiracy with La-Z-Boy and Wards." (App., p. 4.) The court of appeals reviewed, and specifically agreed with, this evaluation of the evidence offered by World of Sleep.

Application of the "substantial independent evidence" rule hardly constitutes a conflict with other circuits. As the cross petition candidly concedes, that rule has been adopted and followed by at least nine other circuits in addition to the Tenth Circuit. (See cross petition at 26, n. 5.) By following its own rule, as specified in *U.S. v. Peterson,* 611 F.2d 1313, 1330 (10th Cir. 1979), *cert. denied,* 447 U.S. 905 (1980), the Tenth Circuit applied the majority rule and followed a case in which this Court had previously denied certiorari.

II

THE CROSS PETITION APPEARS TO SEEK TO RAISE AN ISSUE WHICH WAS NOT RAISED BELOW.

Although World of Sleep concedes that the substantial, independent evidence rule is followed by most circuits, it now appears, for the first time, to be arguing that this rule, as delineated by the Tenth Circuit in *United States v. Peterson,* 611 F.2d 1313, 1330 (10th Cir. 1979), *cert. de-*

nied, 447 U.S. 905 (1980), and the related procedure of conducting a pretrial *in limine* hearing on the question of whether substantial independent evidence exists, as outlined by the Fifth Circuit in *United States v. James,* 590 F.2d 575 (1979), should not have been followed at all.

In the courts below, both at the district and appellate levels, World of Sleep did not argue that the "independent evidence rule" should not be applied. Nowhere in its brief to the court of appeals did World of Sleep contend that the *Peterson* decision was wrongly decided and should be overruled. All that World of Sleep argued below was that the district court erred in reaching its conclusion that there was not substantial independent evidence of Mauldin's participation in the alleged conspiracy. If the cross petition is in fact asking this Court to overturn the "substantial, independent evidence" rule enunciated in *Peterson,* and followed by at least nine other circuits, that request should be denied because it was never made below.

III

THE PETITION DOES NOT RAISE AN IMPORTANT QUESTION OF FEDERAL LAW.

If, on the other hand, cross petitioner acknowledges that the "independent substantial evidence" rule is the appropriate standard, and it acknowledges, as it must, that this standard was applied by the courts below, this petition does not raise an important question of federal law. Rather, the cross petitioner is merely asking this Court to grant a writ of certiorari so as to give this Court the opportunity to weigh the supposed independent evidence to see if it disagrees with the conclusions reached by the courts below. The re-evaluation of evidence is hardly the

function of this Court nor the purpose to be served by the issuance of a writ of certiorari.

As noted above, the trial court both accepted an offer of proof from World of Sleep's counsel, and conducted an *in limine* hearing at which World of Sleep was given the opportunity to present its supposed independent evidence of the Mauldin defendants' participation in the alleged conspiracy. The trial court heard all the evidence. It concluded that the evidence fell "far short" of proof of participation in a conspiracy. The court of appeals agreed. World of Sleep has given no reason for this Court to have to review the carefully considered conclusions reached by the courts below.

———o———

CONCLUSION

This case presents no legal issue under either the Federal Rules of Civil Procedure or the Federal Rules of Evidence worthy of review. The decisions of the courts below insofar as they grant summary judgment to the Mauldin defendants pose no conflict among the circuits or with the controlling decisions of this Court. The petition does not present an important question of federal law. The writ should be denied.

Respectfully submitted,

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August 2, 1985

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 79-C-1677

WORLD OF SLEEP, INC.,
Plaintiff,

v.

LA-Z-BOY CHAIR COMPANY; MONTGOMERY WARD & CO., INCORPORATED; ARTHUR MARK MAULDIN, JEFF D. MAULDIN, individually and doing business as LA-Z-BOY SHOWCASE SHOPPE, and MAULDIN CORPORATION,
Defendants.

ORDER

(Filed January 5, 1982)

Defendants, La-Z-Boy Chair Company, Montgomery Ward & Company, Inc., and Arthur Mauldin and Mauldin Corporation, filed motions for summary judgment and extensive briefs.[1] Following oral arguments on December 29, 1981, La-Z-Boy's and Ward's motions were denied. The motion of Mauldin and Mauldin Corporation was taken under advisement. This order constitutes my ruling on the latter motion.

The only evidence available to the plaintiff that possibly might involve Mauldin in the alleged conspiracy is a series of taped telephone conversations between representatives of World of Sleep and a representative of La-Z-Boy. In these conversations the La-Z-Boy representative mentions that he has spoken with Mauldin about keep-

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[1]Defendant Jeff D. Mauldin was never served.

ing his prices up and that Mauldin told La-Z-Boy that he would do so. Neither Mauldin nor anyone purporting to speak for him was a party to the taped conversations.

As to Mauldin and his corporation, the taped conversations, being out of court statements, are hearsay, and the comments there attributed to Mauldin are hearsay upon hearsay. Generally, therefore, the references to Mauldin would not be admissible in evidence.

Plaintiff, however, relies on Rule 801(d) (2) (E)[2] of the Federal Rules of Evidence which provides that statements of co-conspirators made in the furtherance of a conspiracy are excepted from the hearsay barrier. Before such co-conspirator admissions may be admitted, however, there must be an independent showing that the conspiracy existed and that the party against whom the evidence is proffered was a member of the conspiracy. *United States v. Andrews*, 585 F.2d 961 (10th Cir. 1978). In *United States v. Petersen*, 611 F.2d 1313 (10th Cir. 1979), the Court required that three elements be shown by independent evidence before the hearsay may be admitted: (1) the conspiracy existed, (2) the declarant and the defendant against whom the conspirator's statement is offered were

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[2]Plaintiff also argues that the conversations should be admitted under Rule 803(24), the residual exception to the hearsay rule. Rule 803(24) was intended, however, to allow for the development of new exceptions to the hearsay rule not already provided by the Rules of Evidence. *See e.g., United States v. Mandel*, 591 F.2d 1347 (4th Cir. 1979). Since Rule 801(d) (2) (E) already excepts admissions of coconspirators, such statements do not come within the intended purpose of Rule 803(24). Moreover, Rule 803(24) is not intended to allow a trial judge free rein to admit hearsay evidence whenever his or her general sense of justice urges its admission. Such an interpretation would abolish the hearsay rule.

members of the conspiracy, and (3) the statement was made during the course of and in furtherance of the objects of the conspiracy.

Plaintiff has submitted no substantial, independent, admissible evidence that Mauldin was involved in a conspiracy with La-Z-Boy and Ward. At the hearing on this matter, however, plaintiff's counsel cited what she characterized as such independent evidence the plaintiff would present at trial. Counsel stated that the plaintiff would offer the results of a survey of Mauldin's advertising during the period of the alleged conspiracy which would show that Mauldin changed its advertising shortly after the alleged conspiracy began. According to counsel, prior to the taped telephone conversations, Mauldin's advertising was more price oriented than it was after the alleged agreement between the defendants. Plainitff's other evidence would be a review of Mauldin's sales tickets during this time period to show that Mauldin's best selling chairs were the same models which were World of Sleep's best sellers.

For the purposes of this motion I have assumed that the plaintiff's evidence at trial would show what was asserted by counsel, even though that evidence was not put into the record in the form required by Rule 56. I nevertheless find that the asserted evidence falls far short of establishing that Mauldin was more likely than not involved in a conspiracy with La-Z-Boy and Ward.

While summary judgment is a drastic measure and rarely should be granted, where there is no significant evidence supporting the complaint, summary judgment is appropriate. *First National Bank v. Cities Service Co.*,

391 U.S. 253 (1968). The remedy is especially appropriate here. Defendants Mauldin and Mauldin Corporation have already been dragged through many months of expensive, time consuming discovery. It became painfully obvious at the December 29 hearing that this discovery has been almost entirely fruitless as to these defendants. Trial is set for twenty court days. To force upon these defendants the expense, emotional strain, and time loss incident to defending themselves in such a trial, on the thin thread of the plaintiff's asserted evidence against them, would be unconscionable.

In summary, I find that the plaintiff has shown no admissible evidence, nor even claimed to have adequate admissible evidence, to permit a finding that Mauldin was involved in a conspiracy with La-Z-Boy and Ward.

Accordingly, it is

ORDERED that Arthur Mauldin and Mauldin Corporation's motion for summary judgment is granted, and all claims as to them are dismissed with prejudice, each party to pay his or its own costs.

DATED at Denver, Colorado, this 5th day of January, 1982.

BY THE COURT:

/s/ Jim R. Carrigan, Judge
United States District Court

ship (p. 363) you anything. Our plan is to leave you right there until we can figure out exactly what's gonna happen, and we're very sorry that any of this is happening.

I had no explanation for these people at Montgomery Ward — you know. I said, "I don't know." I said, "I don't know." I don't know why the man ran an ad like that — you know — using Montgomery Ward. So I don't know that you have a reason or that you want to tell me if you do have one.

MR. HANSEN: Well, that ad run before you'd called me this last time. In fact, it run that morning —

MR. RALL: Yeah, I know.

MR. HANSEN: You called me the other day —

MR. RALL: I know it. When I got out to Las Vegas, I ran into just a little bit of a time problem. I did sit down and talk to Gary for a few moments and then Bob separately and never got 'em together. So I had to fly back here, but I had told them both that I'd promised to call you, which I had promised to do — and I still think — you know — somebody is going to get out there pretty fast. Hopefully it will be Gary and I together if he — I can get his schedule worked out right.

But I really wanted to tell you that I took a beating over there. I'm responsible for Montgomery Ward, and they know me real good, and I feel just a little bludgeoned right now. I'm calling — I promised you I'd call, so I'm calling, but I'll get back to you after I get back home. I'm still in (p. 364) Chicago, and after I get back home and get a chance to sit down and talk to Gary, I'll call you back then —

MR. HANSEN: Did you talk to Reau about what we had discussed from the standpoint of —

MR. RALL: I only — just briefly. I told him what you'd said. I said, "Bob," I said, "tell me, did you — you know — write an order for the Lazy-Boy Showcase Shop that was similar to or — you know — like what Tom's program is?" And he said, "No," he said, "I did not do that." He said, "You know, he's got some of the some styles and some of the same colors," he said, but — he said, "He is not running Tom's program." He said, "I can't stop some similarity in there," but he said, "I did not purposely do that;" and I said, "Tom thinks you did or somebody did," and I said, "so — but I wanta come and look at it and that's one of the things I'm gonna do when I come there — take a look at that program and see exactly what it is."

But — I talked to Art Mauldin. I said, "Art," I said, "do you realize that you have a lot of similar styles?" He said, "I realize that."

MR. HANSEN: I'm not talking about similar styles. I'm just talking about their stock position —

MR. RALL: Yes.

MR. HANSEN: — when they opened —

MR. RALL: Okay.

(p. 365) MR. HANSEN: — the identical frames and covers that were the strongest in our program, and I don't think that they have any knowledge whatsoever of what we bought or what we had on order, like I explained to you —

MR. RALL: No, Art Mauldin didn't know. I talked to him, and he said, "No," he said, "I don't even know what

you mean'' — you know — he didn't know, and Bob had said, no, that he did not do that — you know — I mean, that he did not do that on purpose, so — but I have not really had the chance to sit down and take the time and sensibly discuss it, and I think it should be done right there, so that's the reason for the visit. I only — I got in there late on Thursday and I left Saturday morning, and we had a meeting all day — we had a meeting Thursday night and one all day Friday, so I — I really could not get the two of those guys together —

MR. HANSEN: Uh-huh.

MR. RALL: — Gary and Bob, so I'm going to — like I say, come out there and take a look at it for myself, so —

MR. HANSEN: Okay. And when do you think you'll be out?

MR. RALL: I don't know. I'm going to call you Friday. What I want — I don't know what Gary's schedule is. Gary is not there right now, and he won't be there tomorrow, and he didn't come here to Chicago, so I don't really know what the devil his schedule is. I talked to him about the Montgomery (p. 366) Ward ad — you know — I mean, about the ad that you ran with Montgomery Ward in it. I mentioned that to him this morning because he knew that they had called me for a command performance to come over there today, so he did not say anything about it that meant anything. He just said, "Well, let's wait till you get back, and we'll talk about it Friday." I asked him then if he knew what his schedule was, and he said he'd rather talk about it on Friday, so I don't know exactly what it is.

But I'll get to you — I'll get back to you on Friday, because I'd like to have it be the first part of next week.

MR. HANSEN: Okay. I'm going to leave town Saturday, and I'll probably be back in here — at the latest, Wednesday, but probably Tuesday.

MR. RALL: Okay.

MR. HANSEN: I'd like to sit down and see what's going to happen.

MR. RALL: Yes, we would too. Yes, we have to.

Okay, Tom, I'll call you on Friday.

MR. HANSEN: Okay, fine.

MR. RALL: All right, thank you. Good-bye.

* * *

EXHIBIT 4 (TR. III P. 368)

(p. 368) MR. STANGE: Bob?

VOICE: Mr. Stange?

MR. STANGE: Yeah.

VOICE: Hold on just a second, please.

MR. RALL: Bob Rall.

MR. STANGE: Bob, Bill Stange, World of Sleep in Denver.

MR. RALL: How are you today, Bill?

MR. STANGE: Pretty good. Don't think I've ever met or talked to you.

MR. RALL: I don't think so either.

MR. STANGE: Were you out here before?

MR. RALL: No.

MR. STANGE: Okay. Tom Hansen had to leave town and he asked me to give you a ring.

MR. RALL: All right.

MR. STANGE: I understand that you were going to call him this afternoon or he was to call you or something and work out some sort of a meeting for next week when he gets back into town.

MR. RALL: I talked to Bob Reau about — oh, it's been a couple hours now, and I told Bob to try and get ahold of Tom and get back to me and I haven't heard back, so obviously he hasn't been able to contact him.

MR. STANGE: Yeah.

MR. RALL: Tom told me he was going to leave tomorrow (p. 369) and be back on Tuesday.

MR. STANGE: Ah, he got away this afternoon, and he said he would be back Tuesday.

MR. RALL: I'm coming Thursday.

MR. STANGE: Thursday you'll be out?

MR. RALL: Yeah. That — if that timing is all right with him, I right now have it tentatively set to be there Thursday morning at ten o'clock.

MR. STANGE: Okay. Do you want us to pick you up?

MR. RALL: No, Bob Reau will pick me up.

MR. STANGE: Okay, so you'll be out around Thursday morning at ten, eh?

MR. RALL: I'll be at your place — I'll be shaking your hand at ten o'clock that morning.

MR. STANGE: Real good. We're doing a pretty good job for you out here, aren't we?

MR. RALL: Yeah, you sure are, Bill.

MR. STANGE: Huh?

MR. RALL: If you want to see some blood running down a guy's back —

MR. STANGE: No, we've moved a ton of chairs.

MR. RALL: Sure have. I spent four hours in Montgomery Ward vice president's office the other day, Wednesday afternoon after I — before I talked to Tom. Montgomery Ward — you know?

(p. 370) MR. STANGE: Yeah?

MR. RALL: They give us twelve million dollars a year, Bill.

MR. STANGE: They do that much with you?

MR. RALL: Yup.

MR. STANGE: I knew they were a big account. I didn't know that they did twelve mill with Lazy-Boy, though.

MR. RALL: They're big.

MR. STANGE: That doesn't leave you any business elsewhere, does it, if you do that much with them?

MR. RALL: Well, we were doing nice business with you up until the time we put you on credit hold because you people haven't been paying your bills.

MR. STANGE: Well — you know — that's a sore point I think — both with Tom and with myself, because I get involved in the accounting and bookkeeping end of it — and — you know — these shipments that were ordered here back in January — these things got all screwed up. They didn't come when they were ordered, the dating was incorrect on some of the invoices, and — we had planned to discount these — you know — pretty much as we scheduled them and talk to Reau about them, and they just flat got all bollixed up and didn't come in in any reasonable order as to what Tom's program was on advertising and selling them, and so it — we've got — you know — some checks we're working on now in these shipments — (p. 371) getting the things put together, and in looking through some of them, a lot of them aren't even due yet. As a matter of fact, there's —

MR. RALL: No, you — there's quite a few that are not due, and we're not talking about those. We're talking about all of those that are past due. We don't care about those that are not due yet.

MR. STANGE: I don't know that there is — all of those are past due yet. I think the comptroller said — I think 25,000 last week, and — you know — we should be so close to current that I don't really understand the reasoning in putting a credit hold on it.

MR. RALL: Well, that's — Bill, that's been on there for almost a month now, a little more than that, if I'm not mistaken. I'm having our people get me a computer printout — you know — on these shipments and payments for the past six months, and I'm going to bring it with me, you know, if you want to get your records together, why I'd be more than happy to sit down — you know — and go over them and see what the situation is.

MR. STANGE: Yeah, because —

MR. RALL: That's why I'm coming.

MR. STANGE: Uh-huh, because we really have had no problems over the past nearly two years, and it is very irritating now when we have some custom orders that are (p. 372) going begging — you know — over some apparent credit problem, and I don't think this thing would have ever developed if the merchandise would have been — you know — planned in and shipped in one time and everything.

MR. RALL: Well, you have to plan your business, and although our deliveries are bad — we admit to that; they're not the greatest. We do the best that we can, and

I think you'll find, if you get into it, that we've serviced your account very well. We might have been late here and there — a few — maybe for cover or something else, but you programmed them out. You got them pretty close, but we slipped a couple of times, but you got them pretty close.

But — well, like I say, you have to run your business. If you think that that's why the situation is what it is today, well, then, that's the way you think.

MR. STANGE: Yeah.

MR. RALL: But we have to run our business, too, and so — and we're both, I think, big enough to sit down and take a look at it and see what the problem is, and we'll try and get it solved if possible. That's what I'm coming out for.

MR. STANGE: Uh-huh. Is Gary coming out too?

MR. RALL: No.

MR. STANGE: He can't make it, or —

MR. RALL: No, Gary — Gary won't — Gary's going to be in New York at that time. He's already got a full schedule (p. 373) all of next week, and the following week we are going to be on vacation. They close this whole place down for two weeks, and so it will be myself and Bob Reau.

MR. STANGE: Uh-huh. Well, I'll be talking to Tom probably tonight. I'm sure he's going to be disappointed that Gary didn't — you know — see fit to come out and sit down and talk to him.

MR. RALL: Well —

MR. STANGE: No reflection on you, Bob —

MR. RALL: No, none whatsoever. It's perfectly all right —

MR. STANGE: (inaudible) — be able to handle that, but Tom had rather thought after talking to Gary a month or so ago, that Gary was going to come on in and —

MR. RALL: That was Gary's plan, but things have got kind of tightened up on him, and he's going one way and I'm coming west, and he's going east, so — I'll be there, though.

MR. STANGE: Okay. Well, we'll see you Thursday morning, then, Bob.

MR. RALL: Tom had already — when Tom was talking to Gary, Gary had told him at that time that he was planning to come out later, and he kind of scheduled himself to come out there in August, anyway, so — you know — I'm sure Gary will come out afterwards — you know. If he said he'd be there he would. When I was talking to Tom a few weeks ago there (p. 374) on the 16th, I said to him, you know, I'd talk to Gary and see if he could get out — you know sometime the end of this month, and he's just not able to do it, but he'll be along. He'll be along there as soon as we get our vacations over with.

MR. STANGE: Yeah. Okay, Bob. We'll see you, then, Thursday.

MR. RALL: Okay, Bill.

MR. STANGE: All right, good-bye.

MR. RALL: Nice talking to you. Bye.

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